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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of) MM DOCKET NO. 93-75
)
TRINITY BROADCASTING OF)
FLORIDA, INC.) File No. BRCT-911001LY
)
For Renewal of License of)
Station WHFT(TV) (Channel 45),)
Miami, Florida)
GLENDAL E BROADCASTING COMPANY) File No. BPCT-911227KE
)
For a Construction Permit for)
a New TV Station on Channel 45)
at Miami, Florida)

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To: The Review Board

MASS MEDIA BUREAU'S CONSOLIDATED
REPLY TO EXCEPTIONS

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Summary

The Bureau submits that the Initial Decision ("ID") correctly concluded that Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("TBN"), through its agents Paul Crouch, Pearl Jane Duff and others, exercised *de facto* control over Translator T.V., Inc./National Minority Television, Inc. ("NMTV") at all times relevant to this proceeding. The Bureau further submits that the ID correctly concluded that TBN and NMTV abused the processes of the Commission by not fully disclosing the nature and extent of that control to the Commission in applications filed on behalf of NMTV to acquire full power television stations. Although the Bureau initially argued that the noted misdeeds warranted a forfeiture and not a loss of license, the Bureau now believes that the ID's ultimate conclusion to deny the renewal application of Trinity Broadcasting of Florida, Inc. for Channel 45 is appropriate in light of all the circumstances of this case.

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MASS MEDIA BUREAU'S CONSOLIDATED REPLY TO EXCEPTIONS

Preliminary Statement

1. The Mass Media Bureau, pursuant to Sections 1.276 and 1.277 of the Commission's Rules, hereby replies to certain exceptions in the briefs of Trinity Broadcasting of Florida, Inc. ("TBF")/Trinity Broadcasting Network (collectively, "TBN") and National Minority Television, Inc.¹ ("NMTV"), both filed on January 23, 1996. The Bureau's failure to reply to any particular exception or argument should not be construed as a concession on the Bureau's part as to the accuracy or completeness of those exceptions or arguments.

Counterstatement of the Case

2. The TBN issues in this proceeding focused on whether TBN and Paul F. Crouch ("Crouch"), TBN's president, exercised *de facto* control over NMTV and whether TBN and Crouch abused the Commission's processes by claiming unwarranted minority preferences in applications to acquire low power and full power television stations. The Initial Decision of Administrative Law Judge Joseph Chachkin, 10 FCC Rcd 12020 (ALJ 1995) ("ID") correctly concluded that TBN and Crouch exercised *de facto* control over NMTV and that TBN and Crouch abused the Commission's processes. The ID further determined that the abuses resulted from intentional deception and ultimately concluded that disqualification of TBF was warranted.

¹ For the sake of simplicity, the Bureau will refer to Translator T.V., Inc. and NMTV as NMTV.

3. The Bureau agrees with TBN that the evidence does not support a conclusion that NMTV abused the Commission's processes with respect to its low power television applications. The Commission's low power rule making proceedings and its public notice and accompanying instructions for claiming preferences indicated that mere ownership of more than 50% of a low power television applicant² was sufficient to support a minority preference claim. See Low Power Television Broadcasting, 82 FCC 2d 47, 75 (1980); Random Selection Lotteries, 93 FCC 2d 952, 976-77 (1983); TBF Ex. 105, Tab G. Thus, in the case of a non-stock corporation like NMTV, one would only look to its board of directors to determine whether the corporation was minority-controlled within the meaning of the low power television rules and policies. During all times relevant to this proceeding, the majority of NMTV's board of directors, its legally constituted governing body, consisted of members of minority groups. Counsel for TBN advised TBN personnel as to the requirements of the law, and they relied upon that advice when they claimed the minority preference for NMTV. ID at ¶¶ 35, 40 and 43.

4. The Commission did not clarify that both *de jure* and *de facto* control of a low power applicant by members of minority groups was necessary before a minority preference could be claimed until the Hearing Designation Order, 8 FCC Rcd 2475, 2480 at ¶ 38 (1993)

² It appears that mere ownership, not control, was paramount in view of the Commission's determination to count the equity shares held by limited partners and beneficiaries of trusts in calculating ownership. This method of determining ownership and control was in stark contrast to the law for determining control in respect to full power broadcast facilities. See Anax Broadcasting, Inc., 87 FCC 2d 483, 488 (1981); Southwest Texas Public Broadcasting Council, 85 FCC 2d 713 (1981).

("HDO"). Prior to that clarification, TBN and NMTV had no way of knowing that they could not legally claim a minority preference for NMTV in a low power television application if TBN controlled NMTV. Thus, prior to the release of the HDO, TBN and Crouch could not have had and did not have the intent necessary to abuse the Commission's processes with respect to NMTV's low power television and television translator filings. Further, because TBN did not have actual notice that the Commission would ultimately require NMTV to have both *de jure* and *de facto* control over its operations, the ID should not have based denial on NMTV's certifications that it was entitled to a minority preference for its low power television and television translator construction permit applications.

5. The Bureau takes a different view with respect to NMTV's full power television applications. Unlike the low power television rules, the full power television rules have traditionally imposed numerical limits on the number of stations that any one entity or party may own and control. These limits were well known to TBN. Thus, when TBN reached these limits, it sought other means of spreading its message. See, e.g., ID at ¶ 48. Indeed, as discussed above, one legitimate means was to seek low power television construction permits through NMTV. However, TBN crossed the line dividing permissible from impermissible behavior when it used NMTV to acquire additional full power television stations.

6. The Bureau acknowledges that, in its proposed findings and conclusions ("PFCs"), it argued that TBN's disqualification was not warranted because there was no intentional deception by Crouch or TBN. Notwithstanding this position, the Bureau did not except to the

ID's ultimate conclusion to deny TBF's license renewal application for Station WHFT(TV), Miami, Florida. In this regard, the Bureau has determined upon further review of the evidence that TBN/NMTV, through their agents, Crouch and Colby May ("May"), attorney for TBN and NMTV, intentionally deceived the Commission by claiming that NMTV was a minority-controlled corporation within the meaning of Section 73.3555 of the Commission's Rules and by failing to disclose the nature and extent of NMTV's relationship with TBN in NMTV's applications to acquire full power television stations in Odessa, Texas; Portland, Oregon; and Wilmington, Delaware. Therefore, the Bureau agrees with the ID that TBF's disqualification is warranted.

Questions Presented

Whether TBN exercised *de facto* control over NMTV.

Whether TBN abused the Commission's processes in NMTV's applications to acquire full power television stations.

Argument

TBN exercised *de facto* control over NMTV.

7. Both TBN and NMTV argue that TBN did not exercise *de facto* control over NMTV. At pp. 3-8 of its Exceptions, NMTV submits that the ID did not fully and fairly consider the record as a whole. NMTV believes that ID should have considered the reasons why TBN provided money to NMTV, the legal and factual context in which NMTV was formed and operated, and the visions of the principals. NMTV believes that, had the ID considered evidence concerning NMTV's "minority purpose" and minority control, a different conclusion would follow. At pp. 10-12 of its Exceptions, TBN also attacks the ID for failing to consider evidence about NMTV's "minority purpose." TBN points to testimony by Crouch, Pearl Jane Duff ("Duff"), a Black female employee of TBN and NMTV director, Armando Ramirez ("Ramirez"), an NMTV director, and James McClellan ("McClellan"), station manager of NMTV's Portland, Oregon, station, and contends that all of this testimony shows that NMTV was not set up as a "sham."

8. Contrary to the claims of TBN and NMTV, the ID exhaustively explains the circumstances surrounding NMTV's formation and details all of its activities. Those events make clear that, from the time of its formation in September 1980 until early 1987, NMTV did *nothing* apart from TBN. (ID at ¶¶ 17-34, 39-40, 45, 51). Thus, from 1980 to 1987, NMTV held board meetings only when TBN held board meetings. ID at ¶ 28. From 1980 to 1987, NMTV never sought to buy low power television stations (or any other stations) but merely filed construction permit applications for television translators because those were the only situations where TBN might need minority and diversity preferences to increase its chances of success. ID at ¶ 51. From 1980 to 1987, NMTV had no bank account, and TBN controlled any money which could have or should have gone to NMTV. ID at ¶¶ 31-34.

9. The ID further shows that from 1987 up to the time of the 1991 petition to deny its application to acquire a television station in Wilmington, Delaware, NMTV continued under the direction of TBN and took no action which would conflict with TBN's goals. Thus, for example, while TBN was buying low power television stations and bare construction permits, NMTV never sought to acquire a low power television station except through the filing of a construction permit application when it could claim a minority preference. ID at ¶¶ 51, 101-07, 122. Only TBN purchased or attempted to purchase low power television stations even though Duff, an NMTV director, knew about the availability of such stations because of her position at TBN. ID at ¶¶ 51, 106, 122, 236. Likewise, NMTV made no move to purchase a full power television station until TBN had reached its limit of 12 (ID at ¶¶ 56-57), nor did it even discuss the possibility of buying existing low or full power television stations until late

1991, subsequent to the petition to deny and Commission inquiry. ID at ¶ 121. Moreover, prior to the HDO, NMTV took no concrete steps to develop a corporate headquarters staff which was not 100% staffed by TBN employees, nor did it make any efforts to break away from TBN's domination outside of starting to repay its debt to TBN. (ID at ¶¶ 61, 122, 135). Thus, the rejected proffers or discounted testimony concerning NMTV's "minority purpose," as opposed to what NMTV actually did and refrained from doing between 1980 and 1993, have so little evidentiary value that their exclusion can, at most, only be viewed as harmless error.

10. NMTV and TBN submit at pp. 8 and 10, respectively, of their Exceptions that the ID did not fairly consider the significance of the provisions in NMTV's bylaws which allowed the removal of any director without cause. NMTV claims that other corporations formed by Crouch--corporations which NMTV labels TBN subsidiaries -- amended their articles to prevent Crouch's removal as a director except for cause. The evidence, however, is not quite as clear cut as NMTV suggests. Some of the TBN corporations, specifically, Trinity Broadcasting of Washington, Inc. and Trinity Broadcasting of New York, Inc., never included language to protect Crouch's role as director and president. ID at ¶ 16; TBN's Proposed Findings and Conclusions ("PFCs") at ¶ 38, n. 19. Thus, the absence of special language protecting Crouch in NMTV's bylaws does not significantly undercut the conclusion that TBN and Crouch controlled NMTV. Further, TBN's claim at pp. 9-10 that Crouch never intended to control NMTV is contradicted by his initial appointment as president, his continued presence in that position, and his pivotal role in determining the composition of the NMTV

board. ID at ¶¶ 22, 112, 119-20, 124. TBN's claim is further contradicted by TBN's own newsletters to its contributors, in which TBN represented that NMTV was merely a satellite division of TBN and, later, that NMTV's stations were owned and operated by TBN. ID at ¶¶ 29-30, 69, 75, 90, 97.

11. NMTV and TBN urge at pp. 8-10 and pp. 30-1 of their Exceptions, respectively, that ID did not properly consider Duff's actions on behalf of NMTV. Specifically, NMTV faults the ID for not differentiating between Duff's work at TBN and her activities on behalf of NMTV, while TBN charges that the ID denigrates Duff's judgment and accomplishments. Regardless of whether Duff's duties vis-a-vis NMTV exactly match or only roughly approximate her TBN duties, the plain fact of the matter is that Duff was a TBN employee throughout the period under review. ID at ¶ 15. Indeed, since 1981, she has held the position "Assistant to the President," which TBN has asserted is the second highest management office in its hierarchy. ID at ¶¶ 14, 98. She is an ordained TBN minister. ID at ¶ 13. She has served on the boards of TBN and other Trinity-named corporations from 1979 to 1984. ID at ¶¶ 13, 38 and 53. She has continuously served on the boards of Community Educational Television, Inc. ("CET"), TBN's educational subsidiary, and TBN's foreign corporations as a director since 1983. ID at ¶¶ 48, 53. Duff performed all of the foregoing duties as part of her job at TBN. Given the above, it is reasonable to conclude that Duff's principal loyalty has been to Crouch and TBN.

12. Both NMTV (at p. 9 of its Exceptions) and TBN (at pp. 13-14 of its Exceptions)

argue that the ID failed to accord sufficient weight to the times when Duff and/or Espinoza chose to oppose a position espoused by Crouch. The Bureau submits that the ID adequately considers matters concerning the Odessa, Texas television station and the business arrangements that existed between TBN and NMTV. The Bureau also believes that the decision not to build a translator station in Stafford, Texas, had nothing to do with NMTV but occurred because Duff, as head of TBN's low power television operations, made the reasonable decision not to build an unneeded television translator.

13. By way of background, the Stafford translator application was the only application (out of 17 such applications) filed by NMTV in 1980, which the Commission ultimately granted. Indeed, the grant did not occur until 1988, and it was made to Translator T.V., Inc. MMB Ex. 180. It is fair to infer that NMTV had forgotten about that application during its pendency for there is no evidence in the record of a certification concerning minority and/or diversity preferences (MMB Ex. 72), and there was no amendment to change the name of the applicant to NMTV. Thus, when the Commission issued the construction permit in the name of Translator T.V., Inc., it is also fair to infer that the grant came as a surprise to NMTV. While NMTV ultimately sought and received authority to build at a new site (TBF Ex. 124, pp. 4-20), there appears to have been no real effort to build the station. Thus, there was none of the activity regarding the Stafford station that accompanied the contemporaneous grant of NMTV's Fresno low power television station, or the subsequent grants of television translator applications for Columbus, Ohio; Salt Lake City, Utah; and Charlotte, North Carolina. See ID at ¶¶ 104-05. Indeed, the record reflects that NMTV chose to begin construction activity

on the Columbus translator station less than three weeks after Duff decided not to build the Stafford translator station. Compare MMB Ex. 255; TBF Ex. 101, Tab A. Moreover, shortly before Duff transmitted to May the contract and application for the sale of the Stafford permit, the NMTV board had considered possibilities for *expansion*, and NMTV had filed *five* applications for additional television translator stations. MMB Ex. 230; MMB Ex. 247. In short, any disagreement between Crouch and Duff over whether to sell the the Stafford station or build it and then sell it later had virtually nothing to do with NMTV. Rather, the more likely explanation is that Duff, as the person in charge of TBN's low power television operations (ID at ¶ 106), made the sensible decision not to build the Stafford facility because devoting resources to its construction did not make much sense. The area in question already received TBN programming from CET's Houston station. Constructing the Stafford facility and collecting money for TBN that might otherwise go to CET would have been contrary to the interests of CET, on whose board both Duff and Crouch sat. ID at ¶ 48. It therefore seems implausible that Crouch felt strongly about the need to build a modest translator facility which would virtually be repeating the TBN programming already on the air simply to carry TBN's telethons. Further, given these circumstances, Espinoza would have had no role, and no basis for meaningful input, in deciding whether the Stafford facility should be built. See Glendale Broadcasting Company ("Glendale") PFCs at pp. 63-65.

14. On p. 27 of its Exceptions, TBN asserts that "[t]he finding that TBN treated NMTV with the same "modus operandi" as TBN-controlled companies is flatly wrong. (ID at ¶ 312) The record clearly shows that NMTV's network revenues were treated differently

from the revenues of TBN-controlled stations." TBN's criticism misses the mark. The ID refers to TBN's initial provision of funds to NMTV and how that compared with TBN's practice for providing funds to its other owned and operated stations as compared to its practices when it loaned money to "affiliated" entities. As described in the ID at ¶¶ 47, 49 and 52, TBN had very different practices for companies it "owned" and those with which it was merely "affiliated." In the case of the former, loans would be made without interest, note or security agreement. In the case of the latter, there would be interest bearing notes, security agreements and/or special concessions. In the case of NMTV, TBN provided funds without note or security agreement to cover the acquisition costs for the Odessa and Portland full power television stations as well as the low power stations NMTV acquired. ID at ¶¶ 70, 82, 94-95, 107, 110. Indeed, the first time NMTV made arrangements to pay for any of the services provided by TBN did not occur until January 1991, when NMTV obligated itself to pay for TBN's bookkeeping and accounting services. ID at ¶ 133. Finally, although TBN claims at p. 27 of its Exceptions that the ID erred by "critici[zing] TBN for financing NMTV without formal notes or interest," TBN neglects to point out that NMTV did not sign its first such note until August 23, 1991, well after the May 1991 petition to deny NMTV's Wilmington application. ID at ¶¶ 98-99.

15. The evidence shows that, in the area of finances, NMTV was treated almost exactly like CET, TBN's educational subsidiary that holds licenses for noncommercial educational television stations in Harlingen, Beaumont and Houston, Texas. Thus, NMTV, like CET, initially received money on an as-needed basis from TBN without the formality of a

note or security agreement, while the indebtedness was carried on TBN's books and reflected on TBN's financial statement in an NMTV column. ID at ¶ 49. Beginning with calendar year 1988, when NMTV had its own operating television station, NMTV, like CET when it acquired an operating station, no longer appeared on TBN's financial statement. ID at ¶ 50. Rather, NMTV had a separate financial report. Glendale PFCs at p. 141; TBN PFCs at p. 166. Further, once NMTV's Odessa and Portland television stations became operational, TBN's accounting department credited to NMTV 80% of the contributions received by TBN from areas served by those stations. Glendale PFCs at pp. 144-45; TBN PFCs at p. 165. Nonetheless, TBN's practice of informally giving money to NMTV on an as-needed basis continued until the summer of 1991, when NMTV executed a promissory note for funds lent by TBN for the proposed purchase of the Wilmington television station. ID at ¶¶ 98-99. The only other note executed by NMTV relative to its indebtedness to TBN bears a date of January 1, 1993, well after the Commission's letter of inquiry to determine whether TBN controlled NMTV. ID at ¶ 100; Glendale PFCs at pp. 146-48; TBN PFCs at pp. 167-68.

16. The ultimate conclusion as to whether or not *de facto* control exists has traditionally been reached on a case-by-case basis. See, e.g., Turner Broadcasting System, Inc., 101 FCC 2d 843, 848 (1985). Moreover, the factors considered in determining *de facto* control are basically the same regardless of whether a commercial or noncommercial licensee is under scrutiny. Compare Southwest Texas Public Broadcasting Council, supra, with Arnold L. Chase, 5 FCC Rcd 1642 (1990). The evidence in this proceeding shows that NMTV was created by Crouch and TBN. ID at ¶¶ 18, 21-22. Crouch and TBN have used and attempted

to use NMTV throughout its history as an outlet of TBN programming and as a vehicle for acquiring stations that TBN could not acquire on its own. ID at ¶¶ 26, 66, 73, 90, 97, 103-05. TBN employees and consultants have always dictated NMTV's application strategy, and TBN has continuously held out NMTV to the public as a TBN programmer. ID at ¶¶ 26, 29-30, 75, 86, 90. During all relevant periods, NMTV has been totally dependent on TBN's financial generosity. ID at ¶¶ 31-34, 51, 68, 70-72, 82, 89, 94-95, 97, 99, 107. NMTV has always been operated and overseen by TBN, and former TBN, employees. ID at ¶¶ 77, 91, 106, 128. The only rational conclusion that one can reach is that TBN controlled NMTV.

TBN abused the Commission's processes in NMTV's applications to acquire full power television stations.

17. In the Bureau's PFCs at ¶¶ 302 and 309, we contended that the reality of the TBN/NMTV relationship was well known to Crouch, Duff and May, and that NMTV's applications for full power television stations created the impression that NMTV was minority-controlled when, in fact, it was not. Nevertheless, the Bureau concluded that there was no intent to deceive the Commission and that, therefore, TBF's renewal application should be renewed. However, the Bureau also recognized that the question of whether the abuses presented aggravating circumstances sufficient to justify denial of renewal was a difficult one.

18. After studying the ID, the Bureau chose not to except to the ultimate conclusion that denial of the TBF renewal application was warranted. Indeed, the Bureau submitted that the ID with respect to Trinity -- that is, TBN, TBF and NMTV -- was supported by substantial record evidence and should be affirmed. Having reviewed the parties' responses to the ID, particularly the Exceptions of TBN and NMTV, the Bureau remains persuaded that the weight of the evidence supports the conclusion that TBN and its agents, intentionally deceived and/or attempted to deceive the Commission by falsely claiming that NMTV was minority-controlled within the meaning of Section 73.3555 of the Commission's Rules and by failing to disclose information regarding the nature and extent of the relationship between TBN and NMTV in NMTV's applications for full power television stations in Odessa, Portland and Wilmington.

19. TBN's Exceptions at p. 15 focus primarily on conversations May had with Commission staffers Alan Glasser and then Video Services Division Chief, now Bureau Chief, Roy Stewart. In those conversations, May is said to have revealed that TBN would be financing NMTV, that TBN would be supplying NMTV's programming, and that TBN employed NMTV director Duff. In addition, May gave Stewart a copy of NMTV's bylaws, which, *inter alia*, specified that the President (Crouch) had authority, subject to NMTV's board, to supervise, direct and control the business and officers of the corporation. TBN submits that the foregoing disclosures -- as well as those in other filings made by NMTV and TBN which provided information about the TBN/NMTV relationship and Duff's ongoing association with TBN -- negate any inference that Crouch meant to conceal the TBN/NMTV relationship from the Commission.

20. Assuming, *arguendo*, that the May/Glasser and May/Stewart conversations occurred as described, it is reasonable to infer that May understood that NMTV could legitimately seek to acquire the full power stations only if TBN did not in fact control NMTV. Indeed, as pointed out in the ID at ¶ 57, May did understand that neither Crouch nor TBN could exercise actual working control over NMTV. However, this understanding is at odds with what NMTV actually disclosed in each of the three applications and with what NMTV initially argued when confronted with the petition to deny its Wilmington application; namely, that NMTV's board of directors need only have legal, not actual working control over NMTV's stations. ID at ¶ 98. It thus appears that May knew that the Commission was concerned as to whether TBN controlled NMTV. It also follows that May's testimony that he

based his advice to TBN on: 1) a reading of Section 73.3555 which did not include Note 1; and 2) Commissioner Patrick's observations in his dissent to the modification of the national ownership rules³ -- that the right to purchase broadcast stations over the established ceiling turns on the race of the proposed owners alone and that no concern is given as to whether the minority owners will have any control at all -- is incredible.

21. Moreover, May was not alone in understanding that the Commission would be interested in knowing about the existence and extent of the TBN/NMTV relationship. Crouch also understood that everything about that relationship should be divulged. ID at ¶ 65. Notwithstanding this knowledge, the three NMTV applications do not inform the Commission that a relationship even existed between TBN and NMTV. ID at ¶¶ 66, 85 and 96. Further, the applications provide no hint that TBN had controlled NMTV and had repeatedly represented to its contributors that NMTV was nothing more than a TBN division.⁴ Given Crouch's understanding that TBN was in the business of acquiring stations since ownership would protect TBN from damage to its ministry (ID at ¶ 61) -- because, presumably, ownership would protect TBN while mere affiliation or cable carriage left TBN at the mercy of others -- it can reasonably be inferred that Crouch and May chose not to fully inform the Commission because full disclosure would have prevented the acquisition of the additional

³ See Amendment of Section 73.3555, 100 FCC 2d 74, 104 (1995).

⁴ The Bureau recognizes, of course, that the representations concerning NMTV's status as a division of TBN had ceased some years earlier. ID at ¶¶ 29-30. What continued, however, were TBN representations that NMTV's stations were owned by TBN. ¶¶ 75, 90. What also continued was TBN's absolute control over NMTV's low power operations. ID at ¶¶ 101-07.

television stations. ID at ¶ 331. In sum, a reasonable interpretation of the evidence is that Crouch and May lacked candor in the Odessa, Portland and Wilmington applications.

22. In concluding that NMTV's full power television applications were deceitful, the Bureau finds unpersuasive the arguments that Crouch relied on May to tell the Commission what was necessary and that May based his advice and drafted the applications pursuant to an understanding of the Section 73.3555 of the Commission's Rules that equity ownership was dispositive regardless of working control. See TBN Exceptions at pp. 4-5, 7-9; NMTV Exceptions at pp. 17-18. As discussed above, May understood that NMTV needed not only *de jure* but also *de facto* control in order to properly claim that it was a minority-controlled entity within the meaning of Section 73.3555 of the Commission's Rules. Further, as discussed above, Crouch understood that the Commission needed to know about the true nature of the TBN/NMTV relationship in order to determine whether Crouch could hold a 13th and 14th cognizable interest in a full power television station. Despite these understandings, the NMTV applications say nothing about a relationship with TBN, nor do they begin to give the Commission any clue that NMTV is, in reality, a TBN owned and operated company.

23. Thus, TBN's and NMTV's reliance upon Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995) is misplaced. In Fox, the Commission exonerated the applicant of deceit because the underlying law was not settled at the time of the representations at issue. Specifically, it was not ultimately determined until 1995 that the ownership structure and

financial arrangement made by Fox in 1985 gave its alien patron a greater share of ownership than permitted without an appropriate waiver. Moreover, the relevant applications disclosed the basic facts of the relationship between the domestic corporation and the alien source of funding. Hence, although the applicant was held to have alien ownership which exceeded the benchmark of Section 310(b)(4), it had not lacked candor or misrepresented facts when it first acquired the stations.

24. By comparison, the Commission rule which TBN and NMTV evaded, Section 73.3555, expressly stated in Note 1 that control was not limited to majority stock ownership but included actual working control in whatever manner exercised. As discussed above, TBN and NMTV deceitfully chose to limit their disclosures only to the question of majority stock ownership. In light of this behavior, the Commission has the authority to deny TBF's application. See, e.g., KQED, Inc., 3 FCC Rcd 2601 (1988). To deter future misconduct, it should so exercise this authority. Character Policy Statement, 102 FCC 2d 1179, 1210-11, 1224, 1227-29 (1986).

Conclusion

25. In sum, the Bureau recommends: 1) denial of TBF's captioned application for renewal of license for Station WHFT(TV), Miami, Florida; and 2) denial of Glendale's captioned application for a construction permit for a new television station in Miami, Florida.

Respectfully submitted,
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CERTIFICATE OF SERVICE

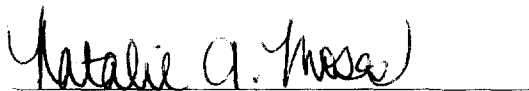
I, Natalie Moses, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certify that I have, on this 28th day of February 1996, sent by regular United States mail or delivered by hand, copies of the foregoing, "Mass Media Bureau's Consolidated Reply to Exceptions" to:

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